IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 7991 of 2005(B)

PETITIONER:

P.AYYAPPAN, EXCISE GUARD,
EXCISE CIRCLE OFFICE, THIROORANGADI,
PARAPPANANGADI P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.

3. ASSISTANT EXCISE COMMISSIONER,
MALAPPURAM.

BY GOVERNMENT PLEADER SHRI. K.R. DEEPU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER NO: K.DIS. 20518/93/EX.85 DT. 14.9.95 OF THE COMMISSSIONER FOR GOVT. EXAMINATIONS, KERALA

EXT.P2: -DO- OF THE LETTER NO: M1-1773/96 DT. 29.5.1998 OF THE 3RD RESPOPNDENT

EXT.P3: -DO- OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY, TAXES DEPT., THIRUVANANTHAPURAM DT. 28.12.1999

EXT.P4: -DO- OF THE LETTER NO: XEB-6049/2000 DT. 21/10/2000 OF THE COMMISSSIONERATE OF EXCISE OF THE JOINT EXCISE COMMISSIONER

EXT.P5: -DO- OF THE G.O.(P) NO: 45/91/P& ARD DT. 30.12.1991

EXT.P6: -DO- OF THE G.O. (RT) NO: 2387/04/HOME DT. 30.10.2004

jj /TRUE COPY/

P.S. TO JUDGE

KURIAN JOSEPH, J.

W.P(C) No.7991 of 2005

Dated this the 22nd day of November, 2007

JUDGMENT

The issue raised in this writ petition pertains to correction of date of birth in the service records of the petitioner. According to the petitioner his actual date of birth is 25-9-1953. However, in the service records the date is recorded as 15-4-1952. The petitioner entered Government service as Fireman on 24-5-1984. Thereafter he joined the Excise Department as Excise Guard on 6-3-1989. Since the time fixed in Ext.P5 for submitting application for correction of date of birth had expired on 30-12-1992, it is submitted that the petitioner approached the Government for condonation of delay and by Government Order, G.O(Rt)No.1490/1993/Gen.Edn. dated 20-4-1993 the delay was condoned and accordingly the petitioner submitted an application before the Commissioner of Examination on 15-10-1992. It may also be noted that the application dated 15-10-1992 before the Commissioner of Examination was prior to the date of expiry of the period fixed in Ext.P5 namely 30-10-1992. By order dated 14-9-1995 the Commissioner of Examinations corrected the date of birth in the S.S.L.C. book as 25-9-1953 in the place of 15-4-1952. Since the basis of entry in the service record had undergone a change, the petitioner

submitted an application before the Controlling Authority to correct the entry in the service book. Accordingly the Controlling Authority corrected the date of birth of the petitioner in the service records as 25-9-1953 as per proceedings dated 29-5-1998. Pursuant to an audit objection, the petitioner was directed to submit an application before the Government and hence the application dated 25-12-1999 was submitted before the government. By the impugned Ext.P4 order, the Excise Commissioner informed the petitioner that the Government had rejected the request as per letter dated 1-10-2004. Hence the writ petition.

2. The learned Government Pleader submits that there is no application for correction of date of birth by the Government before the cut off date as per Ext.P5 namely 30-12-1992. Inviting reference to several cases wherein the Government had corrected the service records after the cut off date also, it is stated in the counter affidavit that each case has to be considered by the Government on merits. If that be so, there is no justification in rejecting the case of the petitioner since he has a meritorious case when compared to the incumbent referred to in Ext.P6. There the correction of date of birth is just prior to two months of retirement. In the case of the petitioner, he has submitted the application on 15-10-1992 and based on that

application the service book was corrected by the Controlling Authority as early as on 25-9-1998. Going by the original entry the petitioner retired in April 2007. It may be seen that the correction by the Controlling Authority is almost ten years prior to the retirement. The application filed by the petitioner before the Government was only pursuant to an audit objection and that application filed as early as on 28-12-1999 was rejected by the Government only on 1-10-2004, after five years and that too without notice to the petitioner. Learned counsel for the petitioner submits that during the said period of five years the Government has corrected the date of birth of other Government employees who are less meritorious. Be that as it may, in the case of the petitioner he had been pursuing his case ever-since 1992, prior to the cut off date fixed in Ext.P5. Prior to ten years of his retirement the service records were corrected by the Controlling Authority. Only pursuant to an audit objection request was made before the Government. Government took action in the matter only after five years, in 2004. In that view of the matter, interest of justice requires that the case of the petitioner also is reconsidered by the Government. Ext.P4 and the order therein by the Government are accordingly set aside.

3. There will be a direction to the first respondent to consider

afresh the case of the petitioner with notice to the petitioner and in case the Government has corrected the service records in the case of any incumbent who submitted applications after the cut off date fixed in Ext.P5 and who had at least two years of period left for retirement at the time of submission of the application, the case of the petitioner shall also be considered. Appropriate orders as above in the interests of law and justice shall be passed by the Government within a period of two months from the date of production of a copy of this judgment by the petitioner.

The writ petition is disposed of as above.

(KURIAN JOSEPH, JUDGE)

ahg.

KURIAN JOSEPH, J.

W.P(C).No.7991 of 2005

JUDGMENT

22nd November, 2007